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SEP 22 2005

OFFICE OF PETITIONS

In re Application of
Jeffrey D. Messerly
Application No. 09/826,070
Filed: April 4, 2001
Attorney Docket No. END-0736

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 22, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee/publication fee in a timely manner in reply to the Notice of Allowance mailed May 13, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 16, 2005.

The above-identified application became abandoned for failure to timely pay the issue fee. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. See MPEP 711.03(c)(III)(A)(1). Therefore, the filing of a request for continued examination (RCE) is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). In view of the authorization contained in the petition to change any additional fees due, the \$1,400 issue fee will be charged to Deposit Account No.10-0750.

Petitioner is advised that the issue fee paid on September 22, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.¹

¹ The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

Telephone inquiries should be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 3731 for processing of the request for continued examination under 37 CFR 1.114.


Wan Laymon

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy